MT LEGISLATIVE HISTORY

Chapter 362 1975

Bill H (S) 134 Original bill & hist. ___C

H. Committee on Judiciary S. Committee on Judiciary

Hearing Date(s)	MAR 19	✓C	Hearing Date(s)	JAN 22	✓C
	MAR 21	✓C		FEB 5	✓C
		___C			___C
		___C			___C
Date Out		___C			___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 134

INTRODUCED BY Eck

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 93-4102, R.C.M. 1947, TO PROVIDE FOR A SHOW CAUSE HEARING BEFORE A SHERIFF MAY SEIZE PROPERTY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 93-4102, R.C.M. 1947, is amended to read as follows:

"93-4102. Affidavit and its requisites. (1) When a delivery is claimed, an affidavit must be made by the plaintiff, or someone in his behalf, stating:

~~1. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof;~~

(a) Facts which establish reasonable belief that the plaintiff is the owner, or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

~~2.~~ (b) That the property is wrongfully detained by the defendant;

~~3.~~ (c) That the same has not been taken for a tax, assessment, or fine, pursuant to statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from seizure; and,

~~4. The actual value of the property.~~

(d) Particularly describing the property and the actual value of the property.

(2) The sheriff shall make no seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign such an order if he is satisfied:

(a) That the party seeking possession of the property has made a prima facie showing of his right to possession and the necessity for seizure at a show cause hearing before him with at least three days' notice to the person holding possession of the property; or

(b) That the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking possession."

-End-

SENATE BILL NO. 134 Senator Joe Roberts, District #11, is chief sponsor of the act which deals with a section of the civil code called "claim and delivery." In 1972 the Supreme Court ruled similar types of statutes were unconstitutional. The objection of the U.S. Supreme Court was that there was no due process that plaintiff's claim was just. They said they needed a preliminary hearing to determine if this was necessary.

The bill provides for (1) on page 2, line 12, establishing a hearing; and (2) on page 2, line 21, subsection (b), a remedy in that you can make a showing of this in open court. This is the main merit of the bill.

There were no proponents and no opponents. Senator Roberts waived a closing statement. There were no questions from committee members, and the hearing was closed on the bill.

EXECUTIVE SESSION

SENATE BILL NO. 223 This is Senator Romney's bill and Representatives Baeth, Kendall and Yardley working jointly with staff attorney Diana Dowling tried to make this bill compatible with Representative Yardley's bill which is now in the Senate. Proposed amendments were explained by Diana Dowling (see exhibit of prepared proposed amendments). Following the explanation, Representative Meloy objected to striking section 2 on page 3, line 18.

Representative Meloy moved the amendments as proposed minus striking section 2 on page 3. The motion to amend carried unanimously.

Representative Meloy moved the bill BE CONCURRED IN AS AMENDED. The motion carried unanimously.

SENATE BILL NO. 5 This is Senator Regan's act to revise the marriage and dissolution of marriage laws. Staff attorney Diana Dowling has amendments based on a letter from Father Provo which Representative Yardley went through and kicked out a couple that would hurt the bill. The first amendment by the Department of Environmental Sciences was a request to insert "race and education" as they feel they need this information for statistics.

Father Provo had explained that psychosis was difficult to recognize and there should be at least four years to file an annulment in psychoses cases. Diana Dowling read proposed amendment to the top of page 9, adding a new subsection and dividing the present subsection (a) into three parts (see exhibit).

when the king was soverign and this bill reinserts their immunity and questioned why separate out the National Guard and firemen for soverign immunity.

In questioning, Representative Day was advised that if we don't pass this there is no other soverign immunity given to the state. Representative Meloy stated this is all unnecessary change on the present law and he can't understand why we need special rules. Discussion followed regarding soverign immunity for school boards and Representative Day stated he felt that any time an individual accepts no salary for making decisions they shouldn't be sued. Representative Anderson questioned if the courts haven't been throwing out soverign immunity in the past ten years to which Representative Meloy replied yes, that it was a judicially imposed limitation.

Motion BE NOT CONCURRED IN carried with Representatives Rasmussen, Halvorson, Scully, Seifert and Lory voting no, Representative Kimble, Yardley and Vincent absent.

SENATE BILL NO. 143 Representative Meloy asked that the committee reconsider this bill sponsored by Senator Colberg to provide for prompt judicial review of resolutions proposed by popular initiative. Motion to reconsider bill carried and Representative Meloy stated he supports the motion because he was supposed to present amendments to the committee and was gone when the bill came up. He apologized if this places an extra burden on the committee. He stated that with this bill Senator Colberg puts a limitation on the district court. The problem doesn't arise very often but, when it does, it is important. Representative Rasmussen stated he feels there is a need for this bill.

Representative Anderson made a motion of BE CONCURRED IN AS AMENDED. Representative Meloy stated he would amend this bill by striking everything after the enacting clause and insert an existing section on county initiatives and amend that section. A motion by Representative Halvorson that Representative Meloy have carte blanche and get it done.

Motion BE CONCURRED IN AS AMENDED carried unanimously. The committee said 37-301 should be amended to fifteen days on this.

SENATE BILL NO. 134 Senator Roberts is chief sponsor of this act to provide for a show cause hearing before a sheriff may seize property. Representative Scully stated his concern was answered when he had an emergency provision put in on the bottom of page 2. Representative Scully moved BE CONCURRED IN. Motion carried unanimously. Representatives Meloy, Kimble, Yardley and Vincent absent.

SENATE BILL NO. 274 Senator Towe is chief sponsor of this measure authorizing the creation of community-based centers for rehabilitating criminal offenders. Chairman Huennekens stated there is a set of amendments to change the "de-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 27, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:38 a.m., in room 442 of the Capitol Building.

Senate Bill 154 was not heard at the request of the author.

The following bills were discussed: SB 134
SB 75
SB 80
SB 121
SB 103.

SB 134 There being no testimony, SB 134 was discussed and several amendments suggested. Senator Turnage and Senator Roberts were appointed to draft the amendments.

SB 75 Action will be held on SB 75 until the Committee can review a similar bill being introduced by Senator Thiessen.

SB 80 SENATOR TURNAGE MOVED SB 80 DO NOT PASS. The Committee discussed various aspects of the bill and a letter was read from Missoula County Attorney Robert Deschamps in regard to Boyd v. U.S. THE MOTION CARRIED ON A ROLL CALL VOTE.

SB 121 SENATOR ROBERTS MOVED SB 121 DO PASS. There was discussion regarding confusion in Section 1, page 5, subsection 25, line 19. SENATOR ROBERTS WITHDREW HIS MOTION. Senator Roberts will contact Professor Elison to further define and clarify the section and the Committee will hold action on the bill until that time.

SB 103 Senator Greely presented some background regarding the bill and stated that an inquest does not prove facts in a case but only determines whether or not a deceased person died by criminal means. SENATOR GREELY MOVED SB 103 DO NOT PASS. THE MOTION WAS DEFEATED ON A ROLL CALL VOTE. Further consideration of the bill will be held at a later date.

There being no further business, the meeting adjourned to reconvene Tuesday, January 28, 1975, at 9:30 a.m.

Thomas E. Towe
Chairman

ROLL CALL

Judiciary COMMITTEE

44th
~~SECOND HALF~~ - ~~43rd~~ LEGISLATIVE SESSION 1975 Date 1/27/75

NAME	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

HJR 6 SENATOR WARDEN MOVED HJR 6 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 130 SENATOR GREELY MOVED SB 130 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 134 SENATOR TURNAGE MOVED TO AMEND THE BILL BY STRIKING "PLAINTIFF" ON PAGE 1, LINE 13 AND 18, AND PAGE 2, LINE 1, AND INSERTING "PERSON CLAIMING THE PROPERTY"; AND FURTHER AMEND THE BILL ON PAGE 2, LINE 14 BY STRIKING "HOLDING" AND INSERTING FOLLOWING "PROPERTY" ON LINE 14 "IF SUCH PERSON CANNOT BE FOUND FOR PERSONAL SERVICE, NOTICE POSTED ON THE PROPERTY AND IN THREE (3) PUBLIC PLACES IN THE COUNTY WHERE THE PROPERTY IS LOCATED IS SUFFICIENT SERVICE FOR THIS PURPOSE". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR TURNAGE MOVED SB 134 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 138 SENATOR TURNAGE MOVED TO AMEND LINE 15 AND 20 BY STRIKING "SHALL" AND INSERTING "MAY". SENATOR CETRONE ASKED TO CONSIDER THE AMENDMENTS SEPARATELY. SENATOR TURNAGE WITHDREW THE AMENDMENT TO LINE 15. THE MOTION TO AMEND LINE 20 CARRIED UNANIMOUSLY ON A ROLL CALL VOTE. SENATOR TURNAGE MOVED SB 138 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 143 SENATOR TURNAGE MOVED TO AMEND THE BILL ON PAGE 4, LINE 14 BY STRIKING "RIGHT TO BRING SUCH" AND FURTHER AMEND BY STRIKING "IS WAIVED" AND INSERTING "SHALL NOT BE COMMENCED". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR TURNAGE MOVED SB 143 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 99 SENATOR GREELY MOVED HB 99 DO PASS. SENATOR WARDEN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Towe assigned the following bills to be carried on the floor:
HB 31 - Senator Greely
HB 99 - Senator Cetrone
HJR 6 - Senator Warden.

SENATE COMMITTEE JUDICIARY

Date FEB 5, 1975 SENATE Bill No. 134 Time

NAME	YES	NO
THOMAS E. TOWE	V	
JOE R. ROBERTS		
V.E. CETRONE	V	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

/s/ Thomas E. Towe

Secretary Chairman

Motion: by Senator Turnage that SB 134 Do Pass as Amended.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date Feb 5 Senate Bill No. 134 Time

NAME	YES	NO
THOMAS E. TOWE	Y	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Turnage to amend SB 134

(include enough information on motion--put with yellow copy of committee report.)

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REFERENCE BILL

impair the remedy sought by the person seeking possession."

-End-